

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Andrew Chiang	Team: Team # 7	CCRB Case #: 200409961	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/20/2004 8:00 PM	Location of Incident: § 87(2)(b)	Precinct: 69	18 Mo. SOL 2/20/2006	EO SOL 2/20/2006	
Date/Time CV Reported Thu, 10/07/2004 2:23 PM	CV Reported At: Other	How CV Reported: In-person	Date/Time Received at CCRB Thu, 08/26/2004 6:00 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Lashonda Dyce	27892	932152	069 PCT
2. POM Brian Soll	30373	933373	069 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Soll	Abuse: PO Brian Soll entered § 87(2)(b)	§ 87(2)(b)
B.POF Lashonda Dyce	Abuse: PO Lashonda Dyce entered § 87(2)(b)	§ 87(2)(b)
C.POF Lashonda Dyce	Abuse: PO Lashonda Dyce threatened to arrest § 87(2)(b)	§ 87(2)(b)
D.POF Lashonda Dyce	Abuse: PO Lashonda Dyce issued a summons to § 87(2)(b)	§ 87(2)(b)

### Synopsis

On August 20, 2004, PO Lashonda Dyce and PO Brian Soll responded to a house on § 87(2)(b) in Brooklyn occupied by § 87(2)(b) and her tenants, § 87(2)(b) and § 87(2)(b). § 87(2)(b)'s tenants called the police to complain that § 87(2)(b) had shut off their electricity. After speaking to the tenants and inspecting their home, POs Dyce and Soll entered § 87(2)(b)'s § 87(2)(b) apartment and ordered her to restore power to her tenants. PO Dyce issued § 87(2)(b) a summons for Unlawful Eviction. On August 26, § 87(2)(b) filed a complaint with the CCRB alleging that PO Dyce and PO Soll entered her house without her consent, and that PO Dyce in particular threatened to arrest her and gave her a summons she didn't deserve. § 87(2)(g)

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### Summary of Complaint

§ 87(2)(b) a § 87(2)(b), was interviewed at her home on § 87(2)(b) on August 26, 2004 (encl.9a-c). § 87(2)(b) expressed an interest in having her complaint mediated. However, her complaint was ineligible for the process. To obtain greater detail into her complaint, § 87(2)(b) was asked to provide follow-up statements at the CCRB on October 29 (encl.10) and over the phone on November 16 (encl.11a-c). Her statements were consistent, and the summary of her complaint follows below.

§ 87(2)(b) owns a two-family house on § 87(2)(b) in Brooklyn, where she and her family live on the § 87(2)(b) floor and the § 87(2)(b) apartment. Until August 20, 2004 § 87(2)(b) and § 87(2)(b) were her tenants on the § 87(2)(b) floor. Since February 2003, § 87(2)(b) has had a fractious relationship with them. During that time, § 87(2)(b) has filed five complaint reports against her tenants alleging various kinds of harassment. Upon following the necessary court procedures and filing the proper paperwork, a notice of eviction was finally served by a city marshal to her tenants on August 19, 2004. According to § 87(2)(b) § 87(2)(b) and § 87(2)(b) completely moved out on August 20, 2004.

The day before they moved out (August 19), § 87(2)(b) called the police and alleged that § 87(2)(b) had shut off their electricity. An officer (identified as PO Brett Raso from the summons) responded to the residence at 9:21PM. § 87(2)(b) informed the officer she did not turn off their power, but admitted she had an "emergency" circuit breaker in the § 87(2)(b) and allowed PO Raso to inspect it. However, they could not return power to the first floor. PO Raso issued § 87(2)(b) a summons for "Unlawful Eviction." That night, § 87(2)(b) called for an electrician to come and make the necessary repairs. § 87(2)(b) stated that after her tenants moved out, she discovered that the circuit breaker on the first floor was damaged. She suspected they intentionally tampered with it in order to have her arrested.

On August 20, § 87(2)(b) stated the electrician came at 8:30AM and 11:00AM but could not gain entry into the tenants' residence. She stated her tenants were home all day packing but purposely refused to answer the door for the electrician. At 7:30PM, § 87(2)(b) and § 87(2)(b) again called the police and complained that § 87(2)(b) had not restored their electricity.

At that time, § 87(2)(b) was in the § 87(2)(b) kitchen with her daughter § 87(2)(b) and her § 87(2)(b) wife § 87(2)(b) was doing § 87(2)(b)'s hair. The kitchen is adjoined by a small vestibule that leads to a door, which opens into the yard. At that time, the door was propped open because it was a warm summer evening. According to § 87(2)(b) all of a sudden, two officers (later identified as PO Lashonda Dyce and PO Brian Soll) "came rushing into her house." PO Dyce had one foot over the threshold when she asked § 87(2)(b) "Are you the landlord here?" § 87(2)(b) responded, "Yes, I am. Can I help you?" However, PO Dyce, followed by PO Soll, were already on their way into the kitchen. § 87(2)(b) did not tell the officers they couldn't enter, but stated she did not have a chance to. PO Dyce approached § 87(2)(b) and immediately demanded to know why her tenants did not have lights. PO Dyce also ordered her to call an electrician. § 87(2)(b) tried to explain that she did not shut off their lights, that she had already been issued a summons (and showed it to them), and that an electrician had come by earlier that day to fix the problem. However, PO Dyce "would not let § 87(2)(b) explain" and stated that she "did not want to hear it." § 87(2)(b) complained that PO Dyce's tone was "rude" and "nasty." § 87(2)(b) stated that PO Dyce accused § 87(2)(b) of 'causing problems.' § 87(2)(b)

§ 87(2)(b) again contacted her electrician, but he stated he could not come until the next morning. PO Dyce warned § 87(2)(b) that if they had to respond to another call and her tenants' lights were still not fixed, they would arrest her. The officers then went back out to speak with the tenants.

§ 87(2)(b) then called the 69<sup>th</sup> Precinct directly and spoke with a Detective because she was upset that PO Dyce had a "nasty" attitude and would not allow her to explain the situation. § 87(2)(b) claimed this detective, whose name she could not remember, told her he has been to her residence before and was familiar with her tenant troubles. While she was on the phone, PO Dyce and PO Soll returned to § 87(2)(b)'s doorway. This time, they did not enter § 87(2)(b)'s § 87(2)(b). Instead, PO Soll demanded that § 87(2)(b) provide her driver's license. § 87(2)(b) stated she had misplaced her wallet due to the confusion of the previous day and could not find it. PO Soll then requested several times for her to step outside. At that point, the unidentified Detective advised § 87(2)(b) not to go outside. He stated to her, "If you go outside, they will arrest you." The Detective told § 87(2)(b) that he wished to speak with PO Soll. § 87(2)(b) informed PO Soll of such, and he went into § 87(2)(b)'s house and took the phone. Afterwards, he seemed to "calm down." PO Soll told § 87(2)(b) he would take whatever identification she had. PO Dyce and PO Soll then returned to their patrol car. When § 87(2)(b) took the phone back, the Detective was no longer on the line; rather, it was now a Sergeant. He told her he would personally come to her house. § 87(2)(b) could not remember his name.

The Sergeant arrived with a female Caucasian officer. When he arrived, he told § 87(2)(b) that she should not have received a summons on either August 19 or August 20. He explained that PO Dyce and PO Soll were "new" officers who had made a mistake and apologized on their behalf. He advised § 87(2)(b) that if she brought her electrician's receipts to court showing that the electrician came, her summonses would be dismissed. § 87(2)(b) stated those summonses have since been dismissed.

In support of her statement, § 87(2)(b) provided the following documents to the CCRB.

Eviction Papers (February 19 – August 19, 2004): Included is the Notice of Eviction served to § 87(2)(b) on August 19, 2004 (encl. 6a-h).

Electrician's Receipts: A receipt made to "E. § 87(2)(b) for fifty dollars on August 20, 2004 states "Visited apt. two times on above date. No response (encl. 8a)." A receipt made to "L. § 87(2)(b) (Larry is § 87(2)(b)'s husband)" for two hundred forty dollars states "Damaged breaker in apt. 1 floor (encl. 8b)."

Complaint Reports (February 27 – August 3, 2004): § 87(2)(b) provided five complaint reports involving various allegations of harassment she has filed against § 87(2)(b) and § 87(2)(b) in this period (encl. 5a-n).

### Results of Investigation

§ 87(2)(a) 160.50, § 87(2)(b)

### Witness Statements

§ 87(2)(b) (the complainant's daughter) is a § 87(2)(b) year old § 87(2)(b). She was interviewed at the CCRB on October 29, 2004 (encl. 12a-c). The summary of her statement follows below.

On August 20, 2004 at approximately 7:30 PM § 87(2)(b) was at the kitchen area of the § 87(2)(b) of the house. She was working on the computer. Her two brothers, § 87(2)(b), were in an adjoining living room. Her mother, § 87(2)(b) was at the table with her friend from church, § 87(2)(b). She was standing behind § 87(2)(b) doing her hair. § 87(2)(b) was about four or five feet away from the door. § 87(2)(b) remembered the door to the § 87(2)(b) was propped open with a weight.

At some point when § 87(2)(b) was on the computer, she saw a Black female (PO Dyce) and a Caucasian male (PO Soll) enter the kitchen. She remembered them asking her mother, "Are you § 87(2)(b)?" Her mother replied, "Yes." They did not ask for permission to come in nor did her mother invite them in. Her mother did not approach the officers.

§ 87(2)(b) remembered PO Dyce approached her mother and was very "nasty." She remembered that one of the officers told § 87(2)(b) that Con Edison informed them she had a circuit breaker in her § 87(2)(b). § 87(2)(b) also remembered PO Dyce saying to her mother two or three times that if she did not turn

the lights on for her tenants, she would be arrested. She also remembered that at one point, the officers tried to get her mother to go outside, but her mother refused and instead called for a supervisor.

§ 87(2)(b) a § 87(2)(b) who resides in Rockaway Beach, provided a telephone statement on November 15, 2004 (encl.13). She stated she would not come to the CCRB because she doesn't have any business in Manhattan.

§ 87(2)(b) stated she is a good friend of § 87(2)(b) and has known her for eight years. She is the wife of her pastor and they often see each other during church activities. On the evening of August 20, 2004, § 87(2)(b) sat in the kitchen of § 87(2)(b) s § 87(2)(b). She recalled that the door was open.

At some point, two officers appeared at the door and asked if § 87(2)(b) was the landlord, and § 87(2)(b) responded, "Yes." The officers then entered. § 87(2)(b) could not recall whether or not the two officers asked for permission to enter. § 87(2)(b) stated a young female Black officer (PO Dyce) did most of the talking. The male white officer (PO Soll) did not say very much. PO Dyce asked § 87(2)(b) about something regarding her situation with her tenants. § 87(2)(b) did not understand the situation, but recalled § 87(2)(b) saying something about having the lights checked out earlier in the day. However, PO Dyce was "nasty" and began to "get aggressive with § 87(2)(b)." PO Dyce said, "If I should have to come here again, you're going to be arrested. I'm giving you a summons for the lights." § 87(2)(b) again tried to explain that the situation was a reoccurrence of something that already happened, and that she already had the lights checked. § 87(2)(b) felt that PO Dyce had "an attitude."

The two officers left the room, § 87(2)(b) called the 69<sup>th</sup> Precinct to speak with a supervisor about POs Dyce and Soll. While on the phone, the two officers returned and asked § 87(2)(b) to step outside. § 87(2)(b) would not step outside. § 87(2)(b) did not recall the verbal exchange that took place, but she recalled that § 87(2)(b) gave the phone to PO Soll. § 87(2)(b) believed that the supervisor § 87(2)(b) was speaking with asked to speak with the officer. § 87(2)(b) did not remember seeing PO Dyce and PO Soll after that. No more than "thirty minutes" later, the supervisor and a female officer arrived. After obtaining § 87(2)(b)'s explanation, PO2 apologized and told § 87(2)(b) that PO Dyce was a "rookie" and that in this case, § 87(2)(b) was a "victim" of "professional tenants."

§ 87(2)(b) and § 87(2)(b) contact information are unknown and they could not be contacted for an interview.

#### Officer Statements

PO Lashonda Dyce was interviewed at the CCRB on November 1, 2004. Her memo book entry (encl.15a-c) regarding this incident states: "18:53 – 96 issued to § 87(2)(b) for unlawful eviction." The summons PO Dyce issued to § 87(2)(b) indicates "August 20...18:53... Unlawful Eviction (encl.14)." The summary of her interview statement follows (encl.16a-b).

On August 20, 2004 PO Lashonda Dyce was assigned to uniformed patrol with PO Brian Soll. At approximately 6:20PM she received a call over the radio to respond to an unlawful eviction at § 87(2)(b) in Brooklyn. At approximately 6:30PM the officers arrived at the location.

PO Dyce and PO Soll met the tenants § 87(2)(b) § 87(2)(b) and § 87(2)(b) outside the residence. The tenants informed the officers that they lived in the § 87(2)(b) floor of the residence, and the landlord lived in the § 87(2)(b) and a structure at the back of the house. They complained that the landlord § 87(2)(b) turned their lights off, that this was an ongoing problem, and that they had called the police the previous day but the landlord had not fixed the problem.

PO Dyce and PO Soll then walked down to the entranceway of § 87(2)(b) s § 87(2)(b) (which can be accessed from the back yard). PO Dyce stated that, before even speaking with § 87(2)(b) she knew she was going to issue her a summons. PO Dyce stated the door was open and she saw § 87(2)(b) in the house doing someone's hair. PO Dyce stated she got § 87(2)(b)'s attention by introducing herself and informing § 87(2)(b) that her tenants had complained about her shutting off their lights. According to PO Dyce, § 87(2)(b) was rude and stated, "A policeman was here yesterday. I got a summons. Do what you have to do." PO Dyce then went into the § 87(2)(b). When asked on what authority she entered the apartment, PO Dyce stated, "I walked a couple of steps in front of me so I could speak to her." She stated § 87(2)(b) did not give her permission to enter the § 87(2)(b) but that § 87(2)(b) did not say PO Dyce could not enter. PO Dyce stated that she knew § 87(2)(b) shut off her tenants' lights before she entered her residence.

Once inside, PO Dyce stated she asked § 87(2)(b) for her driver's license. § 87(2)(b) stated that she had lost it. PO Dyce then informed § 87(2)(b) that if she did not produce a driver's license, she would be arrested. During their conversation PO Dyce stated § 87(2)(b) used profanity but could not recall what she said specifically.

PO Dyce and PO Soll then went back outside to speak with the tenants. The tenants handed PO Dyce a telephone and had her speak with a representative at Con Edison to confirm that the landlord and shut their lights. When asked why they went to speak with the tenants for a second time, PO Dyce stated, "Because I felt sorry for the tenants. The tenant didn't have any lights. If I didn't have any lights, I'd want someone to sympathize for me."

PO Dyce and PO Soll then entered § 87(2)(b) § 87(2)(b) a second time. This time, § 87(2)(b) gave PO Soll her driver's license. PO Dyce then issued § 87(2)(b) a summons for Unlawful Eviction. PO Dyce did not recall § 87(2)(b) ever handing her or her partner a phone to speak with another officer. PO Dyce did not recall a supervisor responding to the scene. PO Dyce and PO Soll left the premises at approximately 6:55PM.

PO Brian Soll was interviewed by the CCRB on November 15, 2004 (encl.18a-b). A summary of his statement follows.

On August 20, 2004 PO Soll and PO Dyce met the complainants, a female tenant, and her boyfriend in front of § 87(2)(b) § 87(2)(b). The complainants led the officers to the side of the house where they lived and informed them that their landlord § 87(2)(b) had shut off their power. They stated they were moving out in a few days and the landlord was supposed to keep their power on until then. They said § 87(2)(b) lived in the rear of the house in a § 87(2)(b).

PO Soll and PO Dyce then proceeded towards the back of the house where § 87(2)(b) resided to "find out if she was going to put the power back on" for her tenants. He stated the wooden door to the § 87(2)(b) was open but the screen door was closed. They knocked on the screen door to get her attention, and § 87(2)(b) opened the door. She did not invite the officers in the house, but she "stepped back" around "four or five steps" and the officers walked a "few steps" into the hallway which led into the kitchen. When asked why PO Soll entered her § 87(2)(b) he responded, "No reason." He believed § 87(2)(b) by stepping back, was inviting the officers to go inside. PO Soll saw two other people in the § 87(2)(b). One person sat at the table and another in the living room adjoining the kitchen. § 87(2)(b) stated that she had turned the power off because she wanted the tenants to leave the residence. She informed the officers that a patrol car had responded earlier and she told those responding officers that she would turn the power back on. She also stated that she had called the electric company to send an electrician to turn on the power for her tenants, but nobody let the electrician in. § 87(2)(b) provided the officers with the phone number of the electric company so that they could call to verify that § 87(2)(b) did put in a request. PO Soll stated that the representative informed the officers that no request had been made. He is not sure which company he called.

The officers then asked § 87(2)(b) to identify herself because they were going to serve her a summons; however, § 87(2)(b) refused "several times." Following what PO Soll stated was "standard procedure," both PO Dyce and PO Soll informed her "one or three times" that she would be arrested if she did not comply. After a few minutes, § 87(2)(b) decided to give her identification to the officers. PO Soll and PO Dyce then returned to the patrol car and PO Dyce wrote § 87(2)(b) a summons for Unlawful Eviction. When they gave her the summons, § 87(2)(b) told them she had already received one yesterday for the same offense. PO Soll stated § 87(2)(b) was "hostile" and "confrontational" throughout the incident. The officers were at the location for approximately "ten minutes." PO Soll stated he had not responded to that location before and has not responded there since August 20, 2004. He stated a supervisor did not respond to the scene and they did not speak to a supervisor on the phone in § 87(2)(b)'s presence. PO Soll stated that if § 87(2)(b) had not opened her door, the officers would not have been authorized to enter § 87(2)(b)'s home.

The supervisor from the 69<sup>th</sup> Precinct that § 87(2)(b) stated responded to the scene was not identified. To date, the roll call necessary for identifying the supervisor has not been received. However, it was determined that the credibility of § 87(2)(b)'s statement, in conjunction with PO Dyce's admission that she entered the § 87(2)(b) without owner's permission, precluded the necessity of identifying the supervisor. Moreover, because the supervisor was not a witness to the allegations in question, it was also determined that, if interviewed, the statement would add little value to the determinations in the case.

Officer History

Neither PO Dyce or PO Soll have any prior CCRB complaints on their record.

Civilian Conviction History

An OCA searched revealed § 87(2)(b) has no prior criminal convictions.

**Conclusion and Recommendations**

Undisputed Facts

The facts that are not in dispute are as follows. On August 19, § 87(2)(b)'s tenants did not have electricity in their apartment and called the police alleging that § 87(2)(b) had shut it off. PO Raso responded and issued § 87(2)(b) a summons for Unlawful Eviction. On August 20, the electricity had not been restored to her tenants' apartment and they called the police once more. PO Dyce and PO Soll responded. After first speaking with the tenants, PO Dyce and PO Soll entered § 87(2)(b)'s apartment and ordered her to restore power to the tenants' apartment. Once entered, § 87(2)(b) did not ask the officers to leave. PO Dyce issued § 87(2)(b) a summons for Unlawful Eviction.

Disputed Facts

It is disputed whether § 87(2)(b) shut off her tenants' electricity in order to evict her tenants. It is disputed whether § 87(2)(b) attempted to restore their electricity by calling an electrician. It is disputed whether § 87(2)(b) invited PO Dyce and PO Soll to enter her residence. It is also in dispute whether a supervisor responded to § 87(2)(b)'s residence after PO Dyce and PO Soll departed.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

**Allegation A: PO Lashonda Dyce entered** § 87(2)(b)

**Allegation B: PO Brian Soll entered** § 87(2)(b)

New York State Law prohibits warrantless entries into private premises by the police to search or make an arrest absent three conditions: consent by the owner, exigent circumstances, and hot pursuit (see Ch.3 “Exceptions to the Rule in *Payton*” and Ch.4C “Exceptions to the Search Warrant Requirement” in *New York Search and Seizure* by Barry Kamins). § 87(2)(g)

(see application of the “emergency doctrine” in Kamins P.321-325). However, the Court of Appeals narrowly defined the guidelines for the application of the emergency doctrine in *People v Mitchell*, 39 NY2d 173, 383, NYS2d (1976) when it held that one requirement was “the police must have reasonable grounds to believe that there is an emergency at hand, and that there is an immediate need for their assistance for the protection of life or property (Kamins 321).” § 87(2)(g)

**Allegation C: PO Lashonda Dyce threatened to arrest** § 87(2)(b)

§ 87(2)(b) complained that PO Dyce threatened to arrest her if she had to come back and the lights were not fixed. The standard established by OATH and DCT trials as the benchmark for finding misconduct in threat of arrests cases is the lack of “probable cause” or “reasonable basis” (see *PD v Bradley*, DCT 75419/00; *PD v Grossman*, OATH 2382/00R, *PD v Seligson* OATH 1621/00). If § 87(2)(g)

**Allegation D: PO Lashonda Dyce issued a summons to § 87(2)(b)**

The standard established by OATH and DCT trials as the benchmark for finding misconduct in making an arrest or issuing a summons is the presence of two conditions: lack of probable cause and bad faith. Judge Lewis ruled in *PD v Reinhardt* that “Although respondent is charged with making an arrest without probable cause, the issue is not solely whether respondent had probable cause to make the arrest. Rather, if probable cause was lacking, respondent’s conduct would be punishable if he acted with knowledge that he was acting improperly, acted without concern for the propriety of his actions or acted without due and reasonable care that his actions be proper.” § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: